

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH ATLANTIC WOOD INDUSTRIES, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Atlantic Wood Industries, Inc., for the purpose of resolving certain alleged violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Atlantic Wood” means Atlantic Wood Industries, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Regulations” means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. “Permit” means VPDES Permit No. VA0059056.

SECTION C: Findings of Fact and Conclusions of Law

1. Atlantic Wood owns and operates a wood treating facility, located at 21366 General Thomas Highway in Newsoms, Virginia. The facility is located adjacent to an unnamed tributary to Darden Mill Run and the Nottoway River. The discharge of storm water runoff from the facility is the subject of the Permit which was reissued on June 20, 2000 and expires on June 20, 2006.
2. Section 62.1-44.5 of the Code, 9 VAC 25-31-50 of the Regulations and Part III.L of the Permit requires Atlantic Wood to comply with all conditions of the Permit in order to legally discharge from the facility.
3. Subject to certain conditions and limitations, Part I.A of the Permit requires the facility to monitor stormwater runoff from outfall 002 on a quarterly basis for copper, chromium, arsenic, chemical oxygen demand, total suspended solids and total petroleum hydrocarbons. The facility reported no discharge during six quarters in 2001 and 2002.
4. Part II.A of the Permit requires that monitoring be performed in accordance with procedures approved in 40 CFR Part 136 of the Federal Regulations or alternative methods approved by EPA. Approved methods require that dissolved metal samples be field filtered and preserved. Metal samples were not properly filtered and preserved during the 1st quarter of 2002.
5. Part II.B of the Permit requires that monitoring information include information on date, time and place of sampling. Stormwater, rain and groundwater samples were analyzed without documented analysis time for the 1st quarter of 2002.
6. The alleged violations described above are cited in the Notice of Violation No. W2003-01-T-0006 issued to Atlantic Wood on February 3, 2003. Additional allegations were made in the Notice of Violation that were inaccurate. This Order resolves all of the alleged violations identified in the February 3, 2003 Notice of Violation

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Atlantic Wood, and Atlantic Wood agrees, to comply with all the requirements of the Permit. In addition, the Board orders Atlantic Wood, and Atlantic Wood voluntarily agrees, to pay a civil charge of \$6,200 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. The payment shall include Atlantic Wood's Federal Identification Number and shall note that payment is being made as required by this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Atlantic Wood, for good cause shown by Atlantic Wood, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the above cited Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered alleged violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. Atlantic Wood does not admit nor deny the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Atlantic Wood consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Atlantic Wood declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Atlantic Wood to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Atlantic Wood shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Atlantic Wood shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic Wood shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 48 hours of learning of any condition above, which Atlantic Wood intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Atlantic Wood. Notwithstanding the foregoing, Atlantic Wood agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Atlantic Wood. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic Wood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Atlantic Wood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Francis L. Daniel, Tidewater Regional Director, for
Robert G. Burnley, Director
Department of Environmental Quality

Atlantic Wood voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of
_____, 2003, by _____, who is
(name)

_____ of Atlantic Wood, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.